

## **Wisconsin Department of Transportation**

### **DBE Trucking Guidelines**

February 9, 2004

The intent of the Wisconsin Department of Transportation's (WisDOT) trucking guidelines is to comply with the Disadvantaged Business Enterprise (DBE) Trucking Regulations as defined in 49 CFR, Part 26.55(d) as amended on June 16, 2003, Participation by DBEs in U.S. Department of Transportation Programs (USDOT), and in accordance with the WisDOT waiver granted by the USDOT on March 11, 2003.

This clarification will better reflect WisDOT's position on allowing DBE credit for trucking concerns. It considers the commitment of resources and the financial risks by DBEs who own their own trucks versus those who only lease.

#### **General Guidelines**

WisDOT will use the following general guidelines when considering a trucking concern to ensure that it falls within the normal concept of trucking and how it is eligible to count for credit toward the DBE goal(s) on a project.

1. Each trucking operation will be evaluated on an individual basis.
2. The DBE Trucking concern will not be allowed to obtain trucks from the prime to do the work on the project and have the prime receive credit toward the goal(s).
3. Certified DBE trucking firms are required to submit an annual inventory of all equipment owned and/or leased on a long-term basis in order to receive DBE credit toward project goals. They must also update and re-submit their schedules any time a change occurs.
4. The DBE may lease trucks from a subcontractor working on the project, provided the trucks are obtained from the subcontractor prior to the project letting date. The lease agreements for these trucks must be provided to the Bureau of Equity and Environmental Services (BEES), Civil Rights & Compliance Programs Section at least one week before the letting as verification in order to receive credit. A bon-a-fide lease must be for a minimum of 6 months.
5. To be considered an eligible DBE trucking operation, the DBE must be responsible for the management and supervision of the entire trucking operation. The trucking operation must be consistent with common industry practice and not merely a contrived arrangement for the purpose of meeting DBE contract goals. Thus, the DBE concern must perform a commercially useful function.
6. Hiring/subcontract agreements from the prime showing specific DBE trucking concerns to be used on a project cannot be changed, altered or amended without prior approval from the BEES, Civil Rights & Compliance Programs Section and the District EEO/Labor Compliance Coordinator.
7. Any significant changes that result in the DBE trucking concern receiving substantially more or fewer dollars than what the prime was given credit for toward meeting the DBE project goal must be reported to the BEES, Civil Rights & Compliance Programs Section immediately.
8. WisDOT Support Services will work with trucking firms and assist them in getting into other fields of work.
9. A leased truck is defined as follows:

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- a. The lease agreement indicates that the DBE firm has exclusive use and exclusive control over the truck. Exclusive use and control as used here does not preclude the leased truck from working for others during the term of the lease provided the DBE releases the vehicle and driver. However, the lease agreement must give the DBE firm absolute priority for use of the leased truck.
- b. The leased truck shall run exclusively under the DBE's L.C. number.
- c. The DBE's name and L.C. number shall be clearly marked on the leased truck's door as defined in Trans 302.8 (letters at least 2 inches high with a minimum of ¼ inch brush stroke"). (This requirement should not be interpreted to require painting the name. Magnetic signs or other options meeting Trans 302.08 are acceptable.)
- d. The lease shall be for a minimum of 6 months.

#### **WisDOT DBE Trucking Concern Evaluation**

- Each DBE concern is responsible for providing lease information to the WisDOT Support Services office for evaluation.
- Evaluation factors that will be considered include:
  - ✓ Years of trucking experience by DBE
  - ✓ Time certified with WisDOT
  - ✓ Management expertise/experience
  - ✓ Type of lease agreement
  - ✓ Terms and conditions of lease(s)
  - ✓ Number of vehicles owned
  - ✓ Past performance record
  - ✓ Any other relevant information

#### **DBE Trucking Goal Credit**

WisDOT will evaluate each DBE on an individual basis.

General Rule – DBEs may lease non-DBE trucks on a 1 for 1 basis for full credit on projects where at least one owned truck also works on the project.

- The DBE trucking concern performs the work with vehicles it owns.
- The DBE trucking concern performs the work with vehicles it owns and/or vehicles it leases that are owned by other certified DBE owner-operators.
- The DBE may lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. (Basically, for each DBE owned truck on a contract 100% credit can be given for an equal number of non-DBE owned/DBE-leased trucks on a contract.)
- Additional participation by non-DBE lessees will receive credit only for the fee or commission it receives as a result of a lease arrangement.
- The DBE trucking concern performs the work with vehicles it owns and additional vehicles it leases on a long-term basis from a non-DBE concern provided that the number of leased vehicles does not exceed the number of vehicles it owns; i.e. a DBE that owns

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three trucks would be allowed to lease up to three more for a total of six for 100% goal credit for six vehicles and goal credit not to exceed the cost of the fee or commission the DBE receives as a result of a lease arrangement on any additional vehicles.

- The use of leased vehicles is approved on a seasonal rather than a project-by-project basis. DBE firms are expected to use the same trucks for DBE credit on all projects throughout the season, rather than leasing different trucks for each project.

#### **Case-by-Case Discretion**

The USDOT approved a WisDOT request for a waiver regarding the DBE trucking regulations as defined in 49 CFR 26.55 on March 11, 2003. Two components of the waiver, the discretion to exceed the credit ratio and credit for work performed only by non-DBE trucks were conditionally approved for use by WisDOT.

1. Discretion to Exceed Credit Ratio – WisDOT requested that they be permitted to exceed the credit ratio of one DBE owned truck to one non-DBE owned truck on a case-by-case project specific basis in certain situations, which was approved with the following conditions.
  - WisDOT establish written guidance and procedures that would govern the exercise of its discretion.
  - The FHWA Wisconsin Division Office must concur in WisDOT's guidance and procedures prior to implementation.
  - WisDOT must ensure that DBE credit awarded for use of leased non-DBE trucks does not exceed the ratio of one DBE owned truck to one non-DBE leased truck on a statewide basis.
  - WisDOT use this authority selectively on a case-by-case basis and that granting this authority not become a routine practice.
  - WisDOT must obtain the concurrence of the FHWA Wisconsin Division Office before making such a determination in each particular case.
  - WisDOT must provide USDOT with a report detailing the use of this waiver no later than September 1, 2005.
  - Federal regulations have changed to allow for a 1:1 ratio credit.

A DBE owned trucking firm may apply for a project waiver to receive 100% credit for more than the one DBE owned to one non-DBE owned truck ratio under the conditions:

- The DBE firms must comply with all the items set forth under General Guidelines noted above.
- That DBE firms must not exceed the ratio of 5 leased non-DBE owned trucks to one DBE owned truck.
- The DBE has satisfactorily documented its ability to:
  - Manage, schedule, and dispatch a larger number of non-DBE long-term leased trucks than the normal ratio would permit. DBE must specifically request the ratio requested and its ability to manage such a fleet;
  - That such an arrangement is important to permit the DBE firm to compete successfully for a specific contract in a particular market area of the state or on a particularly large project;

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- That DBE trucks sufficient to meet the demands of the project are not reasonably available.
- That the DBE has a management system capable of collecting, documenting and reporting to WisDOT and prime contractors the actual achievement attained by the firms own trucks, the firms DBE leased trucks, and the firms non-DBE leased trucks.
- That the DBE submit semi-annual reports (March 31 and September 30) for each project on which the waiver has been granted.

➤ To request a waiver contact:

- Wisconsin Department of Transportation  
Division of Transportation System Development  
Bureau of Equity and Environmental Services

Civil Rights Compliance Section  
Disadvantaged Business Utilization Programs Unit  
4802 Sheboygan Avenue, Room 451  
P. O. Box 7965  
Madison, WI 53707-7965

2. Credit for Work Performed Only by non-DBE Trucks – WisDOT requested that they be permitted to allow a DBE trucking firm to receive DBE credit for work on a contract on which only non-DBE leased truck perform the work, which was approved with the following conditions:

- WisDOT will permit DBE credit for work performed exclusively with non-DBE trucks only on the basis of a special written exception granted by WisDOT, with the concurrence of the FHWA Wisconsin Division Office;
- This written exception must be granted before the DBE firms signs the contract for such work;
- An exception may be granted only if the DBE firm involved shows that it will be simultaneously performing another contract that precludes the use of any of its own trucks for the work in question, even on a part-time basis;
- No other DBE trucks are reasonably available for the work subject to the exception.

A DBE owned trucking firm may apply for a project waiver to receive 100% credit non-DBE owned trucks working on a project where no DBE owned trucks are working under the following conditions:

- The DBE firms must comply with all the items set forth under General Guidelines noted above.
- The DBE has satisfactorily documented it's ability to:
  - Manage, schedule, and dispatch non-DBE long-term leased trucks when the DBE is working elsewhere;
  - The DBE firm shows that it will be simultaneously performing another contract or contracts which preclude the use of any of its own trucks for the project in question, even on a part-time basis;
  - That the DBE has a management system capable of collecting, documenting and reporting to WisDOT and prime contractors the actual achievement attained by the firms own trucks, the firms DBE leased trucks, and the firms non-DBE leased trucks.
  - The DBE must demonstrate the project schedule was changed after the letting.

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- The DBE must identify reasons for exemption that are beyond the DBEs control; i.e. weather delay, delays in beginning contract, delays created by other contractors.
  - That the DBE submit semi-annual reports (March 31 and September 30) for each project on which the waiver has been granted.
- Only one exemption per DBE firm per season will be permitted.
- To request a waiver contact:
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